

Government Services & Administration

LAI D ON DESKS 7/11/16

Revised 8/15/16

GOVERNMENT SERVICES & ADMINISTRATION - DISCUSSION ONLY 9/08/16

RESOLUTION NO. 2016183

RE: LOCAL LAW NO. OF 2016, A LOCAL LAW AUTHORIZING PESTICIDE
NEIGHBOR NOTIFICATION

Legislators TYNER and STRAWINSKI offer the following and move its adoption:

RESOLVED, that this Legislature of the County of Dutchess adopt Local Law No. of
2016, which has been submitted this day for consideration by said Legislature.

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 11th day of October 2016, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 11th day of October 2016.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

LOCAL LAW NO. OF 2016

RE: A LOCAL LAW AUTHORIZING PESTICIDE NEIGHBOR NOTIFICATION

BE IT ENACTED by the County Legislature of the County of Dutchess as follows:

§ Legislative Intent.

This Board finds that individuals and their personal property are, or can be, unwittingly exposed to pesticides applied on their neighbor's property from commercial and residential lawn applications. This Board further finds that pesticides may pose health and safety risks to people, particularly children, pregnant women, the elderly, and people with infirmities. The intent of this local law is to provide information to county residents about certain pesticide applications to which they may be exposed, so that they can take steps to minimize such exposure to themselves, their families, pets, crops, livestock, backyard wildlife, and property.

Accordingly, this Board hereby adopts the special notice requirements for commercial and residential lawn applications of pesticides as set forth in Section 33-1004 of the New York Environmental Conservation Law. It is intended that this local law be read and applied consistently with that section and all other applicable provisions of the Environmental Conservation Law and regulations promulgated there under.

This law shall be known as the Dutchess County Neighbor Notification Law for Pesticides.

§ Definitions.

All terms used herein shall be as defined in Article 33 of the New York Environmental Conservation Law:

a. "Abutting property" means any property which has any boundary point in common with the property on which the pesticide is to be applied.

b. "Agency" means any state agency; municipal corporation; public authority; college, as that term is defined in the educational law; railroad, as that term is defined in the railroad law; or telegraph, telephone, telegraph and telephone, pipeline, gas, electric, or gas and electric corporation as those terms are defined in the transportation corporations law, which applies pesticides.

c. "Commercial lawn application" means the applications of pesticides to ground, trees, or shrubs on public or private outdoor property. For the purposes of this Local Law the following shall not be considered commercial lawn application:

(1) the application of pesticide for the purpose of producing an agricultural commodity;

(2) residential application of pesticides;

(3) the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;

(4) the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 of the environmental

conservation law where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and

(5) the application of pesticides on golf courses of turf farms.

d. "Commissioner" means the Commissioner of the New York State Department of Environmental Conservation.

e. "Dwelling" means any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place for one or two families.

f. "General use pesticide" means a pesticide which does not meet the state criteria for a restricted pesticide as established under authority of section 33-0303 of the New York Environmental Conservation Law.

g. "Multiple dwelling" means any dwelling which is to be occupied by or is occupied as the residence or home of three or more families living independently of each other.

h. "Pesticide" means:

(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and

(2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

i. "Premises" means land and improvements or appurtenances or any part thereof.

j. "Residential lawn application" means the application of general use pesticides to ground, trees, or shrubs on property owned by or leased to the individual making such application. For the purpose of this Local Law the following shall not be considered residential lawn application:

(1) the application of pesticides for the purpose of producing an agricultural commodity;

(2) the application of pesticides around or near the foundation of a building for purpose of indoor pest control;

(3) the application of pesticides by or on behalf of agencies shall be subject to visual notification requirements pursuant to section 33-1003 of the New York Environmental Conservation Law where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and

(4) the application of pesticides on golf courses or turf farms.

§ Notification Requirements for Commercial and Residential Lawn Applications.

The provisions in this section are adopted in their entirety and without exception, pursuant to section 33-1004 of the New York Environmental Conservation law.

a. Retail Consumer Information Sign.

(1) All retail establishments that sell general use pesticides for commercial or residential lawn application shall display a sign meeting standards, established by the Commissioner pursuant to subdivision one of section 33-1005 of the Environmental Conservation law, in a conspicuous place, and such sign shall be placed as close as possible to the place where such pesticides are displayed.

b. Prior Notification of Commercial Lawn Applications.

(1) At least forty-eight hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply written notice, as defined in subdivision three of section 33-1005 of the Environmental Conservation law, to:

A. occupants of all dwellings on abutting property with a boundary that is within one hundred fifty feet of the site of such application; and to

B. owners, owners' agents, or other persons in a position of authority for all other types of premises that are on abutting property with a boundary that is within one hundred fifty feet of the site of such application. Owners or owners' agents of multiple family dwellings and for all other types of premises, owners, owners' agents or other persons in a position of authority shall post such written notice in a manner specified by the Commissioner.

(2) Such prior notification provisions shall not apply to the following:

A. the application of anti-microbial pesticides and anti-microbial products as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in 7 U.S.C. Section 136 (mm) and 136 q (h) (2);

B. the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets. This section shall not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area;

C. the use of non-volatile insect or rodent bait in a tamper resistant container;

D. the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;

E. the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide;

F. the use of boric acid and disodium octaborate tetrahydrate;

G. the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;

H. the application of a granular pesticide, where granular pesticide means any ground applied solid pesticide that is not a dust or powder;

I. the application of a pesticide by direct injection into a plant or the ground;

J. the spot application of a pesticide, where spot application means the application of pesticide in a manually pressurized or non-pressurized container of thirty-two fluid ounces or less to an area of ground less than nine square feet;

K. the application of a pesticide to the ground or turf of any cemetery; and

L. an emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided, however, that prior to any such emergency application, the person providing such application shall make a good faith effort to supply the written notice required pursuant to this title. Upon making an emergency application, the person making such application shall notify the Commissioner of the New York State Department of Health, using a form developed by such commissioner for such purposes that shall include minimally the name of the person making such application, the pesticide business registration number or certified applicator number of the person making such application, the location of such application, the date of such application, the product name and United State Environmental Protection Agency registration number of the pesticide applied and the reason for such application.

c. Posting of Residential Lawn Applications.

(1) All persons performing residential lawn applications treating an area more than one hundred square feet shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Such markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size.

(2) Such markers shall be in place on the day during which the pesticide is being applied and shall instruct persons not to enter the property and not to remove the signs for a period of at least twenty-four hours. Such instruction shall be printed boldly in letters at least three-eighths of an inch in height.

§ Enforcement.

Pursuant to section 33-1004 of the New York Environmental Conservation Law, the Dutchess County Department Behavioral and Community Health shall enforce the provisions of this local law administratively, provided that all sanctions, which shall be assessed after providing a hearing or opportunity to be heard, shall be as specified in the Penalties provision herein of this law and shall be payable to and deposited with Dutchess County. In particular, the Dutchess County Department Behavioral and Community Health shall be responsible for neighbor and applicator provisions and shall be responsible for retail establishment provisions.

§ Penalties.

a. Administrative Sanctions.

(1) A person providing a commercial lawn application who violates any provision of this local law shall be liable for a civil penalty not to exceed five thousand dollars for a first violation, and not to exceed ten thousand dollars for a subsequent offense.

(2) An owner or owner's agent of a multiple dwelling or owner, owner's agent or a person in a position of authority for all other types of premises, who violates any rule or regulation pursuant to the Section on Prior Notification of Commercial Lawn Applications, and a person

who violates any provision the subdivision Posting of Residential Lawn Applications, shall for a first such violation, in lieu of penalty, be issued a written warning and shall also be issued educational materials prepared by the Commissioner pursuant to subdivision two of section 33-1005 of the New York Environmental Conservation Law. Such person shall, however, for a second violation, be liable for a civil penalty not to exceed one hundred dollars, and not to exceed two hundred fifty dollars for any subsequent violation.

(3) A person who violates the provisions of the section on Retail Consumer Information Sign shall be issued a warning for the first violation and shall be provided seven days to correct such violation; and shall be liable for a civil penalty not to exceed one hundred dollars for a second violation, and not to exceed two hundred fifty dollars for a subsequent violation.

b. Criminal Sanctions for Persons Providing Commercial Lawn Applications.

(1) Any person providing a commercial lawn application and having the culpable mental states defined in subdivision one or two of section 15.05 of the New York Penal Law who violates any provision of this local law, except an offense relating to the application of a general use pesticide, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for a subsequent offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed ten thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.

(2) Any person providing a commercial lawn application who violates any provision of this local law relating to the use of a general use pesticide shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine not to exceed twenty-five hundred dollars. If the conviction is for a subsequent offense committed after the first such conviction of such person under this subdivision, punishment shall be a fine not to exceed five thousand dollars.

§ Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to an person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

§ Effective Date and Filing.

This law shall take effect on the first day of January after it shall have been adopted and filed with the office of Secretary of State.

Within twenty days after adoption of this law, the Clerk of the County Legislature shall forward one certified copy thereof to the Commissioner of the New York State Department of Environmental Conservation and one to the New York State Department of Environmental Conservation and one to the New York State Attorney General.

☐ No Fiscal Impact

PESTICIDE NOTIFICATION LAW

FISCAL IMPACT STATEMENT

APPROPRIATION RESOLUTIONS

Total Current Year Cost

\$

[not being implemented until 2017]

Total Current Year Revenue
and Source:

\$

Source of County Funds (check one)

Existing Appropriations

Contingency

Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Line Item (s):

Related Expenses:

Nature of Expenses:

Anticipated Savings to County:

Net county Cost (this year):

\$0

(over five years):

\$0

Additional comments:

A. 6100, 4458

p. 393 Medicaid - subpart

\$5000

to publicize/enforce law
(to help homeowners, applicators,
retailers)

eventually - from protecting public health

① ALLOCATE \$5000 :

A. 4010.29 DCBCH (Environmental Health)
[materials/publicity]

[money saved in Medicaid - less illness in county from pesticides!]

Morris, Carolyn

From: Mara Farrell [marafarrell@gmail.com]
Sent: Thursday, August 04, 2016 6:20 PM
To: CountyLegislature
Subject: Writing in support of passage of the Pesticide Neighbor Notification Law for Dutchess County

To All Legislators, I am writing today in support of the passage of the above proposed law. Dutchess County should join all New York counties that have already passed this important law - a law which provides neighborhood residents, commercial and residential, ample, prior notification of pesticide usage in their immediate vicinity. Our health and well being need to be a top priority for all county lawmakers. The passage of this law advances quality of life goals for all our residents. Thank you very much, Mara Farrell

MARA FARRELL
291 main street - suite b
beacon - new york 12508
1.845.896.5326/cell: 845.597.9850

Morris, Carolyn

From: Micki Walsh-Strawinski [mickiws7856@gmail.com]
ent: Thursday, September 08, 2016 11:08 AM
to: County Legislators; CountyLegislature
Subject: Pesticide resolution

Dear colleagues -

Below are some links to information I have found and read that have led to my decision to once again co-sponsor the resolution for 48 hour neighbor notification. I hope you will read them and consider signing on too. Joel has asked it to be for discussion only so you all have some time to read these and provide additional information to us.

As you are aware there are exemptions in this resolution that take into consideration our agricultural businesses. Additionally, residents do not have to notify their neighbors 48 hours ahead of application, rather they simply need to flag the area in which the products have been applied. Aerosol pesticides for lying insect control is are also exempt.

I look forward to the discussion.

Micki Strawinski

<http://www.beyondpesticides.org/assets/media/documents/lawn/factsheets/Pesticide.children.dontmix.pdf>

(<http://pediatrics.aappublications.org/content/130/6/e1757>

<http://www.cdc.gov/features/pehsu/>

http://www.pesticidewatch.org/sites/default/files/pets_guide_draft_final.pdf